

NITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CARLOS JOHN WILLIAMS,

Petitioner,

v.

DONALD R. HOLBROOK,

Respondent.

Case No. C18-1807 JLR

**REPORT AND  
RECOMMENDATION**

Petitioner seeks 28 U.S.C. § 2254 habeas relief from his 1996 criminal convictions in King County Superior Court, case number 94-1-03523-8, for first degree rape, burglary, kidnapping, attempted rape, robbery and taking a motor vehicle. Dkt. 4. The Court's records establish the habeas petition filed here is a second or successive habeas petition which must be transferred to the Ninth Circuit.

**DISCUSSION**

In 2000 petitioner filed a § 2254 habeas corpus petition challenging the 1996 King County Superior Court convictions that he again challenges here. *See* Dkt. 1 (C00-1199 JCC). The 2000 petition sought relief on the grounds that a government witness recanted his testimony; DNA evidence was obtained by a false affidavit; trial counsel was ineffective; the identification procedure used in one victim's case was impermissibly suggestive; pretrial continuances violated the Sixth Amendment; petitioner was denied a jury trial; petitioner was improperly denied a

1 continuence of a DNA hearing; the trial court incorrectly denied a motion to dismiss for  
2 prosecutorial misconduct; and petitioner was denied the right to appeal. *See* Dkt. 56 (C00-1199  
3 JCC).

4 In the habeas petition now before the Court, petitioner's grounds for relief refer to an  
5 attached Motion to Modify the Commissioner's Ruling which petitioner filed in the Washington  
6 Supreme Court. Dkt. 4 (18-1807 JLR). The motion to modify filed in state court argues the  
7 Washington Supreme Court Commissioner erred in finding petitioner's claims are time-barred  
8 because petitioner is innocent, and his innocence trumps any time bar. *Id.* In support, the motion  
9 argues DNA evidence was obtained through a false affidavit; trial and appellate counsel were  
10 ineffective; and the state engaged in misconduct. Petitioner also contends in the motion that he  
11 should be granted relief because a witness recanted his testimony, petitioner's speedy trial rights  
12 were violated, an impermissible montage identification procedure was used, and petitioner's  
13 confession was coerced.

14 Based on the Court's records, petitioner's current habeas petition is a second or  
15 successive petition. If a petition is second or successive, then petitioner must seek authorization  
16 from the Court of Appeals before filing the new petition with the district court. 28 U.S.C. § 2244  
17 (b) (3) (A). Ninth Circuit Rule 22-3 (a) provides guidance:

18 Any petitioner seeking leave to file a second or successive 2254 petition or 2255  
19 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An  
20 original and five copies of the application must be filed with the Clerk of the  
21 Court of Appeals. No filing fee is required. If a second or successive petition or  
22 motion, or application for leave to file such a petition or motion, is mistakenly  
23 submitted to the district court, the district court shall refer it to the court of  
24 appeals.

25 Here, there is nothing indication petitioner has sought or obtained permission from the Court of  
26 Appeals. The habeas petition should thus be referred to the Court of Appeals.

1 **CONCLUSION**

2 The Court recommends this habeas petition, which the Court construes as a request for  
3 permission to file a successive petition, be referred to the Ninth Circuit and the file be  
4 administratively closed without deciding whether the petition should be dismissed.

5 Any objections to this Recommendation must be filed no later than **Tuesday, January**  
6 **16, 2019**. The Clerk should note the matter for **Friday, January 18, 2019**, as ready for the  
7 District Judge's consideration if no objection is filed. Objections shall not exceed 7 pages. The  
8 failure to timely object may affect the right to appeal.

9 DATED this 2<sup>nd</sup> day of January, 2019.

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BRIAN A. TSUCHIDA  
12 United States Magistrate Judge  
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